

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES RASO, Trustee of the MASSACHUSETTS
BRICKLAYERS AND MASONS HEALTH AND
WELFARE PENSION AND ANNUITY FUNDS,
Plaintiff,

vs.

DEPAOLI MOSAIC CO., INC., FINAMORA REALTY
TRUST and WALTER F. MORGAN, JR.,
Defendants.

CIVIL ACTION No.
05-11380-RGS

ANSWER TO COMPLAINT

Count I

1. Paragraph 1 states a legal conclusion and requires no answer from Defendants.

To the extent that an answer is required, Defendants deny any factual allegations in Paragraph 1.

2. Paragraph 2 states a legal conclusion and requires no answer from Defendants.

To the extent that an answer is required, Defendants deny any factual allegations in Paragraph 2.

3. The rest of Paragraph 3 states a legal conclusion and requires no answer from Defendants. To the extent that an answer is required, Defendants deny any factual allegations in Paragraph 3 for insufficient knowledge or information from which to form a belief as to the truth of paragraph 3.

4. Defendants admit that DePaoli has a place of business at 126 Magazine Street in Boston, Massachusetts. The rest of Paragraph 4 states a legal conclusion and requires no answer from Defendants. To the extent that an answer is required, Defendants deny any factual allegations in Paragraph 4.

5. Admitted.

6. Defendants admit that Finamora is a Massachusetts trust and deny the rest of Paragraph 6.

7. Denied for insufficient knowledge or information form which to form a belief as to the truth of paragraph 7.

8. Denied.

9. Denied.

WHEREFORE, the Defendants request that judgment of dismissal enter as to Count One, and that the Court award the Defendants their costs in this action.

Count II

10. The Defendants re-allege their answers to paragraphs 1 through 9.

11. Admitted that Morgan is the President of DePaoli; the remainder is denied.

12. Denied.

13. Denied.

WHEREFORE, the Defendants request that judgment of dismissal enter as to Count Two, and that the Court award the Defendants their costs in this action.

Count III

14. The Defendants re-allege their answers to paragraphs 1 through 13.

15. Admitted.

16. Denied.

17. Denied.

18. Denied.

WHEREFORE, the Defendants request that judgment of dismissal enter as to Count Three, and that the Court award the Defendants their costs in this action.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part for the reason that Plaintiff has failed to mitigate its damages.

THIRD AFFIRMATIVE DEFENSE

If Defendants ever owed Plaintiff anything, Plaintiff has waived payment and Defendants owe Plaintiff nothing.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff is not in privity of contract with the Defendants.

FIFTH AFFIRMATIVE DEFENSE

There is no written contract between Plaintiff and Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead fraud and misrepresentation with particularity.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has misnamed one or more of the Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred by the Statute of Frauds.

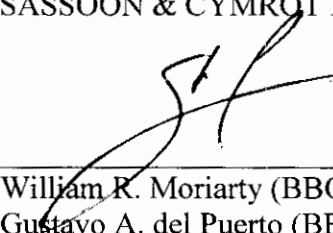
NINTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages were caused by the conduct of others over whom the Defendants are not responsible.

WHEREFORE, the Defendants pray that this Court enter judgment for the Defendants and against the Plaintiff and dismiss the Complaint, together with an award of reasonable attorney's fees and costs, and that this Court grant Defendants any further relief which in the Court's discretion may be just and appropriate.

THE DEFENDANTS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

DEPAOLI MOSAIC CO., INC., et al.,
By their Attorneys,
SASSOON & CYMROT LLP

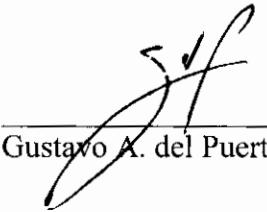


William R. Moriarty (BBO #563769)
Gustavo A. del Puerto (BBO #568056)
84 State Street, Suite 600
Boston, MA 02109
617-720-0099

Dated: 7/29/05

CERTIFICATE OF SERVICE

I hereby certify that I have served on this date a true copy of Defendants' Answer to Complaint by mailing a copy thereof via telecopier and first class mail, postage prepaid, to counsel for the Plaintiff, Michael A. Feinberg, Esq., FEINBERG, CAMPBELL & ZACK, P.C., 177 Milk Street, Boston, MA 02109.



Gustavo A. del Puerto

Dated: 7/29/05